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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,657	08/04/2003	Yoshihiro Nakami	MIPPF046	6349
25920	7590	05/29/2008	EXAMINER	
MARTINE PENILLA & GENCARELLA, LLP			WASHINGTON, JAMARES	
710 LAKEWAY DRIVE			ART UNIT	PAPER NUMBER
SUITE 200			2625	
SUNNYVALE, CA 94085				
MAIL DATE		DELIVERY MODE		
05/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/634,657	<b>Applicant(s)</b> NAKAMI, YOSHIHIRO
	<b>Examiner</b> JAMARES WASHINGTON	<b>Art Unit</b> 2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 February 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above claim(s) 1-9 and 16-30 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 10-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/146/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

Amendments and response received February 27, 2008 have been entered. Claims 1-30 are currently pending with claims 1-9 and 16-30 having been withdrawn pursuant to the restriction requirement electing Species III for prosecution on the merits. Amendments and response are addressed hereinbelow.

***Claim Objections - 37 CFR 1.75(a)***

1. The following is a quotation of 37 CFR 1.75(a):

The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery.

Claims 10-15 are objected to under 37 CFR 1.75(a), as failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention or discovery.

Claim 10 is objected to because the claim recites "...retrieving either of the shooting information and the image processing control information...by an image data generating apparatus..."

However, it is clear from the preamble of the claim, which indicates the image processing is performed "in an image processing apparatus" (e.g., a personal computer or printer), that the

retrieving of either the shooting information or the image processing control information should be from the data generating apparatus (e.g., digital camera) and not by the data generating apparatus. See figure 1 also, which shows the data which can be stored on a "memory card" is received from the data generating apparatus (e.g., digital camera). Claims 11-13 are dependent upon claim 10 and claims 14 and 15 recite similar subject matter. Therefore, these claims are objected to for similar reasons.

Appropriate corrections required in future correspondence.

*Claim Rejections – 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazuo Shiota et al (US 6011547 A1) in view of Naoki Kuwata et al (US 20020030833 A1).

Regarding claim 10, Kuwata et al discloses an image processing method that utilizes shooting information representing a shooting condition of image data (Col. 3 lines 9-16; Col. 2 lines 23-27 wherein the recording information is "...information which varies at each recording depending on a photo taking environment or on an operation by a photographer...") and image

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processing control information for specifying an image processing condition of the image data (Col. 2 lines 19-23 wherein recording information is specific to a camera such as the  $\gamma$  property of the camera), either of which is related to the image data, as image processing information and thereby makes the image data subjected to a series of image processing in an image processing apparatus (Col. 2 lines 7-18 wherein the recording information is added to the image data and used to carry out processing), said image processing method comprising:

acquiring the image data (Fig. 1 image data server transmitted from “image server” to “set-up processing unit”);

retrieving the shooting information and the image processing control information (Fig. 1 Image server retrieves data from digital camera), either of which is related to the acquired image data (Col. 2 lines 7-18 wherein the recording information is related to the image data) by an image data generating apparatus (Fig. 1 numeral 1 Digital Camera) that is a separate body independent from the image processing apparatus (Fig. 1 numeral 3 Image reproducing apparatus); and

Shiota et al fails to disclose or fairly suggest wherein the method utilizes/retrieves either of the shooting information and image processing control information.

However, it is clear from the disclosure that these types of information are distinguishable from one another as cited at Col. 2 lines 19-27 wherein “recording information representing a recording condition...means [including] both information specific to a camera...and information which varies at each recording depending on a photo taking environment”. The processing of the image data is implemented by retrieving and utilizing the recording information which could contain both forms of information. It is clear that the two

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forms of information are not dependent on one another and could thus be processed by the image processing unit independently. It would have been well within the knowledge and predictable to one of ordinary skill in the art to separate the two forms of information used for processing an image and utilize either the image processing control information or the shooting condition information depending upon the availability of either form of information. Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces/market place incentives if the variations are predictable to one of ordinary skill in the art.

Shiota et al fails to disclose or fairly suggest in the case of successful retrieval of the image processing control information, executing the series of image processing of the image data according to the image processing control information, while in the case of failed retrieval of the image processing control information, executing the series of image processing of the image data, based on the shooting information.

However, Shiota does disclose processing image data according to recording information representing a recording condition. Recording information, as described above, includes both forms of information and would be obvious to utilize one or the other forms of information because the differing forms of information are shown to be distinguishable, do not depend upon one another when processing the image data, and provide predictable results is used independently.

Kuwata et al, in the same field of endeavor, teaches utilizing control information to process image data when available and if the control data is not available, process the image data with normal image processing (¶ [101] and Fig. 9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the invention as disclosed by Shiota et al wherein recording information is retrieved and utilized in image data processing to choose an alternate method of processing the image data when the first form of recording information is not found as taught by Kuwata et al. Simple substitution of the second form of recording information (i.e., shooting condition information) from the disclosure of Shiota for the "normal processing" as disclosed by Kuwata et al would have given predictable results of retrieving the shooting condition information after the processing control information was not found.

Regarding claim 11, Shiota et al discloses an image processing method in accordance with claim 10, said image processing method further comprising:

in the case of successful retrieval of the image processing information, not executing retrieval of the shooting information (see rejection of claim 10 wherein Kuwata et al discloses in Fig. 9 wherein when the output control data is found, normal processing is not implemented. The shooting conditions as disclosed by Shiota et al were substituted for the normal processing as disclosed by Kuwata et al, therefore the predictable result would be for the method to implement image processing utilizing the information specific to the camera and not utilizing information specific to the picture taking environment).

Regarding claim 12, Shiota et al discloses an image processing method in accordance with claim 10, said image processing method further comprising:

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in the case of failed retrieval of both the image processing control information and the shooting information, executing the series of image processing of the image data according to default image processing control information, which is general-purpose image processing information set for preset image data (see rejection of claim 10 wherein normal processing is performed when additional data is not specified; see also Fig. 9 steps 214-226. Combining the teachings of Shiota et al wherein both forms of information are distinguished with the method taught by Kuwata et al wherein when no recording information is available, the image data undergoes "normal processing" would provide one of ordinary skill in the art with predictable results of performing "general purpose" processing to the image data when additional image enhancing processing is not available).

Regarding claim 13, Shiota et al discloses an image processing method in accordance with claim 10.

Shiota et al fails to expressly disclose wherein the executing the image processing to the image data is carried out by converting at least part of the shooting information into image processing control information and executing the series of image processing of the image data according to the converted image processing control information.

However Shiota et al discloses the intentions of the photographer can be reflected in recording information, such as whether the atmosphere of a picture is merry or gloomy (Col. 4 lines 25-27). It is common sense that "merry" and "gloomy" are not actual image processing corrections or enhancements that are carried out when processing the image. The terms merely describe the gamma and/or contrast, amongst other image processing corrections/enhancements,

that may be applied to an image while undergoing processing to output the desired image.

Therefore it would have been common sense to one of ordinary skill in the art at the time the invention was made to convert "at least part of the shooting information into image processing control information and executing the series of image processing of the image data according to the converted image processing control information" given the disclosure of Shiota et al.

Regarding claim 14, Shiota et al discloses an image processing apparatus (Fig. 1 numeral 3) that utilizes either of shooting information representing a shooting condition of image data and image processing control information for specifying an image processing condition of the image data, either of which is related to the image data, as image processing information and thereby makes the image data subjected to a series of image processing (see rejection of claim 10), said image processing apparatus comprising:

an image data acquisition unit (Fig. 1 numeral 11) that acquires the image data (see rejection of claim 1);

an image processing information retrieval unit (Fig. 1 numeral 11) that retrieves either of the shooting information and the image processing control information, either of which is related to the acquired image data by an image data generating apparatus (Fig. 1 numeral 1) that is a separate body independent from the image processing apparatus (Fig. 1 numeral 3; see rejection of claim 10); and

an image processing unit that (Fig. 1 numeral 11), in the case of successful retrieval of the image processing control information, executes the series of image processing of the image data according to the image processing control information, while in the case of failed retrieval

of the image processing control information, executing the series of image processing of the image data, based on the shooting information (see rejection of claim 10).

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shiota et al and Kuwata et al as applied to claim 10 above, and further in view of well known prior art.

Regarding claim 15, Shiota et al discloses the method as rejected in claim 10.

Shiota et al fails to disclose a recording medium in which an image processing program causing a computer to implement the method as disclosed in the rejection of claim 10 above.

However, it is clear from the disclosure of the reference that the processing method is carried out by an apparatus. It is well known in the image processing arts that a computer implemented method performed by an apparatus must receive "instructions or program commands" from a program residing on a computer readable medium in order for the apparatus to be operational. (Official Notice)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a program storage medium storing a program which issues program commands, in the invention disclosed by Shiota et al, to make the apparatus operational.

*Response to Arguments*

5. Applicant's arguments with respect to claims 10, 14 and 15 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMARES WASHINGTON whose telephone number is (571)270-1585. The examiner can normally be reached on Monday thru Friday: 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, King Poon can be reached on (571) 272-7440. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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May 19, 2008